



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Bruce Industries, Inc.

File: B-228504

Date: October 27, 1987

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### DIGEST

1. Protest against submission of an alleged below-cost offer on the basis that it constitutes a "buy-in" is dismissed since the possibility of a buy-in is not illegal and does not provide a basis upon which an award may be challenged.

2. Protester's allegations regarding awardee's technical and financial capacity to perform a contract concern matters of responsibility. This Office will not review an agency's affirmative determination of responsibility absent a showing that such determination may have been made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

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### DECISION

Bruce Industries, Inc., protests the award of a contract for power distribution panels to Technical Services Lab, Inc. (TSL) by the Department of the Air Force under request for proposals No. F04606-86-R-1203.

Bruce contends that TSL's offer was below cost and either represented an attempt by TSL to "buy-in" or was unacceptable. Bruce also challenges TSL's capacity to perform the contract.

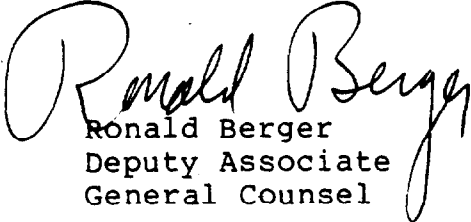
We dismiss the protest.

Bruce alleges that based on its review of the cost of materials and labor, TSL's offer was below cost and therefore was an attempt to "buy-in." The acceptance of a below-cost offer is not illegal, however, and the possibility of a "buy-in" is not a proper basis upon which to challenge a contract award. Blane Enterprises, Inc., B-224416, Oct. 17, 1986, 86-2 CPD ¶ 466.

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Bruce also contends that TSL's low price shows that it does not intend to supply a conforming product and TSL's offer is thus unacceptable. The protester does not state that Bruce's proposal on its face took exception to a material solicitation provision so its argument raises the issue of whether TSL is a responsible firm capable of performing at the price offered. Repco, Inc., B-225496.3, Sept. 18, 1987, 87-2 CPD ¶ \_\_\_\_\_. Further in this regard, Bruce specifically argues that TSL lacks the necessary technical expertise, facilities, personnel and financial capacity to perform the contract. This Office will not review an agency's affirmative determination of responsibility absent a showing of possible bad faith or fraud on the part of contracting officials or that definitive responsibility criteria stated in the solicitation have not been met. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1987); Darby Marine & Supply, Inc., B-228653, Aug. 7, 1987, 87-2 CPD ¶ 140. We do not believe and Bruce does not allege that either exception applies in this case.

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel